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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,836	08/02/2001	Douglas A. Newberg	2153-0116P	4362

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EXAMINER

BEX, PATRICIA K

ART UNIT	PAPER NUMBER
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1743

6

DATE MAILED: 02/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/919,836

Applicant(s)

NEWBERG, DOUGLAS A.

Examiner

P. Kathryn Bex

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II, claims 10-21 in Paper No. 5 is acknowledged. The traversal is on the ground(s) that no serious burden would be presented to the Examiner by examining all of the claims in a single application. This is not found persuasive because the record set forth in the previous restriction requirement clearly indicates that the delineated inventions are in fact patentably distinct from each other or independent each from the other and would require undue burdensome search and examination.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

2. The drawings are objected to because the application does not contain Figures 3 or 4 as disclosed in the Detail Description of Figures section of specification on page 5, paragraph [0025]. Examiner notes in the Patent Application transmittal form dated 02 August 2001, that ten (10) sheet(s) of formal drawings are included. Figures (1A-1B, 2A-2D, 5-9, 10A-B and 11) on respective sheets 1-10 *have* been found in the present application. Therefore, Examiner concludes that the instant Figures (1A-1B, 2A-2D, 5-9, 10A-B and 11) are incorrectly numbered. Accordingly, any reference to Figures 3-4 should be removed from the present application, e.g. page 5, paragraph [0025], etc.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: #120 in Figures 2A-C, see page 16 in specification. A proposed drawing correction or corrected drawings are

required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "cluster of containers attached via a manifold" in claim 13 and the "flowable material supplier being operable to supply a flowable material between adjacent of said plurality of open-ended containers when one of said plurality of open-ended containers has been closed to enclose on of said plurality of receptacles therein" as recited in claim 20, *must be* shown or the feature(s) canceled from the claim(s). No new matter should be entered. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claim 11, line 3 recites "at least one container", the specification does not support "container" but rather disclose "receptacle tube sack" or "semi-ridged magazine". Additionally, claim 13 recites "cluster of containers attached via a manifold", the specification does not support such recitation.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 10-21 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for supplying a flowable material supplier to supply to a receptacle and interior of said housing does not reasonably provide enablement for "a *plurality* of receptacles being fillable with a flowable material while within the internal cavity of said housing" as recited in claim 10. Additionally, the specification does not reasonably provide enablement for "the flowable material supplier being operable to supply a flowable material between adjacent of said plurality of open-ended containers when one of the plurality of open-ended containers has been closed " as recited in claim 20. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims.

With respect to claim 10, the instant specification supports a *single receptacle* being fillable with a flowable material when brought into communication with the flowable material supplier 5, 5a via receptacle conveyer means 50. The other receptacles are held by the stage clip means 80 such that only one receptacle can be engaged with the supplier 5 at any one time, see Figures 2A-2C, 6-11. Further evidence of this is the fact that only a single supply means is disclosed. For examination purposes, it is assumed that only a single receptacle is in fluid communication with a material supplier at a time.

With respect to claim 20, the instant specification on page 21, paragraph [0077] does recite "[B]efore the length of tube wall 193 is sealed, however an agent may be added into the length of the blind end tube sack 191 now containing filled receptacle 51a to protect, stabilize, clean, sterilize, neutralized or otherwise decontaminate or treat the material still in the outside of the receptacle and any residing within the blind end tube sack 191." However, it is not clear as

to *how* the agent is added to the tube sack since the receptacle conveyance means 50 is disclosed as bringing a receptacle into communication with the flowable material supplier 5, 5a. No means for supplying a fluid to the tube sack is shown.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 15-17, 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15, line 2, recite "said plurality", it is not clear as to which plurality applicant is referring to, i.e. receptacles or containers.

Claim 20, lines 2-5, recite "said flowable material supplier being operable to supply a flowable material between adjacent of said plurality of open-ended containers, when one of said plurality of open-ended containers has been closed to enclosed one of said plurality of receptacles therein." No means for supplying flowable material into the open-ended containers is disclosed within the instant specification. Additionally, how is the flowable material supplied when one of said plurality of open-ended containers has been *closed* to enclose one of said plurality of receptacles therein? It is not clear as to what Applicant is trying to claim. Moreover, page 21, paragraph [0077] of the specification fails to clarify the subject matter. Therefore, it is not possible to define the metes and bounds of the invention as claimed.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 10-13, 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Reekie (USP 4,526,045).

Reekie teaches sampling system for sampling radioactive samples comprising a housing 10 for receiving a plurality of receptacle 41 therein. The housing being sealed from the outside ambient environment. The receptacle being inserted into the housing when a container, or receptacle holder, 40 is sealingly attached to port 12 and the receptacle is detached from the container and latched to the transfer arm or clasp 5 (column 3, lines 20-62). The system of Reekie having a flowable material supplier, or injection port, 60 for supplying a flowable material to the receptacle. Moreover, the system having a means for supplying 66 a cleaning or sterilizing agent, i.e. water, for cleaning at least a portion of the housing proximate to the receptacle. The clasp attached to a rod 17 that moves the receptacle onto the needle to pierce the stopper. The system of Reekie teaches a manifold 3 through which a cluster of containers can be supplied to the sealed system (Figs. 8-9). The system further comprising a drain 65 (column 4 lines 22-24, Figs. 3, 5).

12. Claims 10-12, 18-19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Conche *et al* (USP 3,383,923).

Conche *et al* teach a bench system for taking samples of radioactive liquids. The system comprising a enclosed housing (column 9, lines 42-54) having a plurality of receptacles 79 being fillable with a samples while within the internal cavity of the housing. The system includes a container F being disposed between the outside and the internal cavity of the housing. The

container F is mounted within the housing with lipped and toric seals for protecting the user from radiation. The container comprising a longitudinal tube 82 in which a plurality of containers are disposed and moved into contact with a sample supplier 8. After the receptacles have been filled by needles 8, the container F containing the filled receptacle is shifted to a discharging station. In this position, the plunger operating lever 89 is accessible to the operator who shifts the plunger upwardly, introducing a new empty receptacle in the tube 82 by rotating the storage barrel 86, shifts the plunger 89 downwardly which displaces the stack of receptacles and ejects the receptacle containing the sample from the container F into a vacuum-created discharging station. The system comprising another flowable material supplier G which rinses the container F and the sample supplier 8 (column 8, lines 56-65).

13. Claims 10-12, 18-19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaarschmidt *et al* (USP 4,662,231).

Schaarschmidt *et al* teach a system for taking a sample of toxic and/or radioactive substance by introducing such a substance into a sample vessel. The system includes a housing 36 having an internal cavity sealed from the outside environment and a plurality of receptacles 32. The receptacles being fillable with a sample while within the internal cavity of the housing via sampling means 33. The system of Schaarschmidt *et al* teach a sealed container 46 disposed within the housing for receiving said plurality of receptacles after they have been filled. The system further comprising a flowable material supplier 19 which is operable to supply a flowable decontamination liquid to the plurality of receptacles (column 5, lines 1-20). The housing including an injection port 30 and a receptacle holder 46, the holder being in communication with the injection port and sealed within the housing (see Fig.).

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14. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Chow (USP 5,409,841).

Chow teaches a housing 23 for receiving a receptacle 27 therein, the housing sealing the receptacle from the ambient environment through the use of an end cap 29 which blocks the entrance to the plastic box and prevents the exchange of the ambient environment with the receptacle. The housing includes sample inlet 20 formed in the housing for receiving the flowable material therethrough, means for cleaning 21 at least a portion of the housing proximate to the receptacle, the means for cleaning being connected to the inlet and being operable when the end cap is mounted on the housing, a clasp 24 mounted within the housing for engaging the receptacle (col. 4, lines 23-68, col. 5, lines 1-24 and Figs. 1-4).

Conclusion

15. No claims allowed.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Bex whose telephone number is (703) 306-5697. The examiner can normally be reached on Mondays-Thursdays, alternate Fridays from 6:00 am to 3:30 pm EST.


The fax number for the organization where this application or proceeding is assigned is (703) 305-7718 or (703) 872-9310 for official papers prior to mailing of a Final Office Action. For after-Final Office Actions use (703)872-9311. For unofficial or draft papers use fax number (703) 305-7719. Please label all faxes as official or unofficial. The above fax numbers will allow the paper to be forwarded to the examiner in a timely manner.


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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.


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2/5/02


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